

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

**ADVANCEME, INC.**

*Plaintiff,*

**VS.**

**RAPIDPAY, LLC, BUSINESS CAPITAL CORPORATION, FIRST FUNDS LLC, MERCHANT MONEY TREE, INC., REACH FINANCIAL, LLC and FAST TRANSACT, INC. d/b/a SIMPLE CASH**

***Defendants.***

**CAUSE NO. 6:05-CV-424 LED**

**ADVANCEME, INC.,**

*Plaintiff,*

**V.**

**AMERIMERCHANT, LLC,**

***Defendant.***

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**CAUSE NO. 6:06-CV-0082 LED**

## JURY TRIAL DEMANDED

**ORDER GRANTING DEFENDANTS' STATEMENT OF OBJECTIONS TO AND  
MOTION FOR MODIFICATION OF MAGISTRATE JUDGE LOVE'S  
MARKMAN MEMORANDUM OPINION AND ORDER**

On this day, the Court considered Defendants’ Statement of Objections to and Motion for Modification of Magistrate Judge Love’s December 21, 2006 *Markman* Memorandum Opinion and Order. After careful consideration, the Court finds Defendants’ objections to be meritorious. Accordingly, Defendants’ objections shall be, and are hereby, **GRANTED**.

It is, therefore, **ORDERED** that the *Markman* Memorandum Opinion and Order is modified in the following ways:

1. “Obligation” shall be construed as: “an amount owed by the merchant that is independent of any particular purchase and outside of any of the fees and/or costs normally imposed on the merchant for a typical processing transaction.”
2. “Third Party” shall be construed as: “party other than the merchant.”
3. The Court finds that no structure is disclosed for the claimed functions of “forwarding a portion of the payment to the third party” (Claim 10), “forwarding at least a portion of the accumulated payments to the third party” (Claim 17), “periodically forwarding at least a portion of the payment to the third party” (Claim 18), or “forwarding to the third party an amount that is a percentage of the obligation” (Claim 19).